Champion Laboratories, Inc. *and* United Automobile, Aerospace & Agricultural Implement Workers of America, UAW. Case 14–CA–23057

March 31, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On December 9, 1994, Administrative Law Judge Robert C. Batson issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Champion Laboratories, Inc., Albion and West Salem, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(g).

''(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell our employees that they cannot discuss the Union or union activities on working time while permitting them to discuss other nonwork-related activities.

WE WILL NOT interrogate our employees concerning their union activities or the union activities of other employees.

WE WILL NOT impliedly threaten our employees that we will close our Albion and West Salem facilities if they select the Union to represent them.

WE WILL NOT selectively and disparately prohibit our employees from union solicitations and distributions while permitting such nonunion-related activities.

WE WILL NOT selectively and disparately deny our off-duty employees access to the plant for union activities while permitting such access for nonunion purposes.

WE WILL NOT issue verbal warnings to our employees for engaging in union activities and reduce such warnings to writing and place them in our files.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL remove and expunge from our files any written records of the verbal warning given to our employee Wilmer McCreary on January 26, 1994, for engaging in union activities.

CHAMPION LABORATORIES, INC.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent has excepted, inter alia, to the judge's finding that Supervisor Tate threatened to close the plant. In this regard, it argues in part that the judge erroneously stated that employee Bunting had testified that Tate made the threat more than once. Although Bunting testified that Tate had repeated another remark, he did not testify that she had repeated the threat. Bunting's credited testimony, as well as that of Ferido, however, clearly establishes that Tate made an implied plant closure threat at least once. We find that this error does not affect the result.

[2] The judge omitted the final remedial paragraph of the Order prohibiting the Respondent from engaging in conduct ''like or related'' to that enjoined in pars. 1(a) through (f). We modify the Order to include this narrow remedial language as par. 1(g) and further direct that the attached notice including this paragraph be substituted for the one in the judge's decision.

Kathy J. Tolbott-Schehl, Esq.,[1] for the General Counsel.
Thomas O. Magan, Esq., for the Respondent.
John Truffa, for the Union.

DECISION

STATEMENT OF THE CASE

ROBERT C. BATSON, Administrative Law Judge. This case was tried before me at Grayville, Illinois, on September 12, 1994.[2] The charge underlying the complaint was filed by United Automobile, Aerospace and Agricultural Workers of America, UAW (the Union) on June 7 and amended the charge on July 26. The Regional Director for Region 14 (St. Louis, Missouri) issued the complaint and notice of hearing on July 26 alleging that Champion Laboratories, Inc. (Respondent or Employer) had violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

The specific allegations are that on January 26 Plant Manager Darrel Wilson told an employee not to discuss the Union with other employees; that on January 27 Foreman Jim Smith interrogated an employee about other employees' union activities; that on April 26, Foreman Judy Tate impliedly threatened employees that Respondent would close its facilities if they selected the Union to represent them; that on May 15 Plant Superintendent Jim Utley enforced a valid no-solicitation and no-distribution rule selectively and disparately by prohibiting union solicitation and distribution while permitting such nonunion activity, and that on May 18, Foreman Smith selectively and disparately denied an off-duty employee access to the plant for union activities while permitting such access for other purposes, all in violation of Section 8(a)(1) of the Act. The complaint further alleges that Respondent issued a verbal warning to an employee because the employee joined and assisted the Union and engaged in concerted activity in violation of Section 8(a)(1) and (3) of the Act.

In its duly filed answer to the complaint the Respondent admits all procedural allegations but denies that it engaged in any conduct violative of any section of the Act.

I find that the General Counsel has established by a preponderance of the credible evidence that Respondent has violated the Act substantially as alleged.

All parties were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Respondent and General Counsel filed briefs. Upon consideration of the entire record and the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Champion Laboratories, Inc., is a Delaware corporation with its principal offices and places of business located at Albion and West Salem, Illinois, where it is engaged in the manufacture of automotive filters. During the 12-month period preceding issuance of the complaint, Respondent purchased and received at its Albion and West Salem facilities goods valued in excess of $50,000 directly from points outside the State of Illinois and during the same period of time Respondent sold and shipped from the facilities goods valued in excess of $50,000 to points located directly outside the State of Illinois. The Respondent admits, the evidence establishes, and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, the evidence establishes, and I find that United Automobile, Aerospace and Agricultural Workers of America, UAW is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

In mid-December 1993, 12-year employee Wilmer McCreary and others contacted Union Representative John Truffa about attempting to organize the 1700 to 1800 employees employed at the three plants involved here. They decided to wait until after the Christmas holidays to kick off their organizational efforts. The Respondent operates three plants in Illinois: West Salem and Albion. The Albion facility has two plants located adjacent to each other. The main plant commonly referred to as plant 1 and a smaller building commonly referred to as plant 2. All three plants operates through shifts. The first shift starts at 7 a.m. and ends at 3:20 p.m.; the second shift runs from 3:20 to 11:40 p.m. and third shift operates from 11:40 p.m. to 7 a.m.

By way of background, several years earlier the Teamsters Union had attempted to organize these employees and had a Board-conducted election which the Teamsters evidently lost. It appears that there had not been any union activity here since that time. By the time of the proceedings here the UAW organizing drive had fizzled out and there was no longer an active organizing campaign for representation of the employees.

At all times material, the Respondent published in its employees' manual, which was given to all employees upon their hire, a valid rule with respect to solicitation and distribution: (R. Exh. 1.)

> 12. SOLICITATION AND DISTRIBUTION. Solicitation of any kind during the employee's actual work time is prohibited. Actual work time does not include breaks or meal periods. Distribution of literature or other material in Company's production areas is prohibited. Removing or defacing Company notices posted or posting notices on Company property is prohibited.

A. *The January 26 Allegations*

Wilmer McCreary has been employed by Respondent at its West Salem facility in the maintenance department on the first shift for 12 years. At the time of this incident, Glen Schaffer was his foreman and Myles Patterson was his maintenance supervisor. McCreary was apparently among the most active of the union supporters testifying that he attended the union meetings, wore union buttons and other insignia on his apparel at work, and helped to handbill the plant on four or five occasions prior to starting to work at 7 a.m.

McCreary testified that on January 26, about 15 minutes before his worktime, he and two other employees, Bill Hicks and Bill Mitchell, were in the canteen discussing the Ford Motor Company contract which the Union had obtained for them. Another employee Bernard Clodfelter joined them and

[1] The General Counsel or the Government.
[2] All dates herein are 1994 unless otherwise indicated.

interrupted, observing that ''we'd never get a contract like Ford.'' McCreary and the others agreed but stated that they needed something.

Later that day around 10 a.m., McCreary was performing preventative maintenance on an overhead door about 2 feet from where Clodfelter was scaling parts. They again started discussing the Union and Clodfelter expressed the opinion that they would lose a lot of money if the Union came in. McCreary stated that they had already lost a lot of money saying his wife lost $150 a week because the Teamsters didn't get in and he couldn't understand how Clodfelter thought they would lose money. He then reminded Clodfelter of how the Company treated his, Clodfelter's brother, saying the Company humiliated him by disqualifying him every time he bid on a job and putting him back as a janitor. McCreary said Clodfelter got ''irritated and left.''

McCreary testified that neither he nor Clodfelter stopped working during this exchange. Clodfelter was not called to testify. McCreary also testified without contradiction that at no time did he ask Clodfelter to sign a union card or even invite him to a union meeting.

Two or three minutes after Clodfelter left, Production Supervisor Darrel Wilson walked up to McCreary and said, ''[W]ell, you're going to have to knock that shit off-talking about the Union.'' Wilson does not deny, in fact admits, that he said something to that effect to McCreary. (Tr. 204.)

About 2 p.m., McCreary's foreman, Gene Schaffer, paged McCreary to the office and upon entering the office he found Schaffer and Supervisor Miles Patterson. Schaffer told McCreary, ''I got bad news for you'' and handed him a piece of paper. Upon McCreary's inquiry as to what it was Schaffer told him it was a verbal warning for soliciting, stating, ''[Y]ou were observed by a supervisor soliciting.'' Schaffer refused to tell McCreary who the supervisor was or who he was supposed to be soliciting. McCreary refused to sign the warning at that time. The warning states that it is ''verbal'' and reads, ''Solicitation of a fellow employee during that employee's work time is prohibited per the employees handbook 'Standard of Conduct''' (G.C. Exh. 2).

Production Superintendent Wilson testified that on January 26 Clodfelter pulled up to him on his forklift and ''said that he was being harassed or constantly questioned by Will McCreary about joining the Union activities and he stated he had told him on several occasions that he wasn't interested in it at all and wanted him to leave him along.'' Wilson reported this to his manager, Al Yellig, who reported it to Maintenance Manager Myles Patterson. Wilson testified he again went back to McCreary and told him he wasn't to be soliciting on company worktime about union activities. Respondent also did not present Schaffer as a witness.

The General Counsel subpoenaed from Respondent copies of all references to disciplinary actions, warnings issued, and counseling given to employees for talking to other employees on company time, leaving their work area in violation of the solicitation/distribution rules, and being on company property when off duty. (G.C. Exh. 4b.) Respondent produced only one warning action against an employee dated August 22, 1991. Respondent employees approximately 1750 employees, yet prior to McCreary's January 26, verbal warning for soliciting an employee for the Union, Respondent had issued only one similar type of warning. Based on Production Supervisor Wilson's admitted comments, Respondent clearly knew the nature of the conversation between McCreary and Clodfelter and Respondent failed to present any testimony that their conversation in any way interfered with either employees' work.

Five of the six employee witnesses, most of whom had long tenure, called by the General Counsel testified to numerous nonwork-related solicitations by employees and supervisors on worktime without any discipline by management. McCreary testified that he had purchased candy bars from employee Martha Mason while Mason was working on the production line. McCreary testified that he paid for and received the candy while both he and Mason were working. McCreary further testified that approximately a year before he had purchased Boy Scout pizzas from Maintenance Supervisor Myles Patterson while both were working. McCreary said that he would place his pizza order in Patterson's office and that Patterson would call the employees into his office when the pizzas were delivered, while on the employees working time, and advise them they could pick up their pizzas from the canteen refrigerator. Maintenance Supervisor Patterson testified that he also sold candy bars from his office and on cross-examination admitted that by having the candy bars in his office it was possible that employees came in during worktime to buy them.

Gregory Benskin testified that just prior to the hearing here he had participated in a football pool which was run by an office employee. Benskin testified that he was given a slip to fill out with his football picks by the office employee, selected his football picks, and returned the slip and the dollar to the office employee while Benskin was working. Benskin testified uncontrovertedly that he was observed engaging in this conduct by Supervisor Jim Smith. He further testified that in January he sold Girl Scout cookies on behalf of his daughter while on working time and that he observed his supervisor, Jim Smith, buying Girl Scout cookies from another employee. Smith did admit that employees in almost every department engaged in a check pool on a weekly basis and that the money and numbers for the pool were taken up during work hours prior to checks being passed out.

Robert Morris testified that he had sold a variety of food items to other employees while both he and the other employees were working and on break. Morris also testified that he had purchased pizzas on an annual basis from his supervisor, Richard Bristow, while on worktime. This is not denied. Morris further stated without contradiction that he had purchased popcorn from Maintenance Supervisor Patterson also while on worktime. He testified that he had never been disciplined or counseled for these activities.

Employee Carl Benskin testified that he had run a check pool during his worktime for approximately 1-1/2 years, after receiving permission from his supervisor. Benskin stated that in running his check pool he would walk throughout his and other nearby departments and ask employees as they worked if they wanted to participate in the check pool. He further, uncontrovertedly, testified that he had purchased a grill brush from employee Carol Hixenbaugh while Benskin was on worktime. Karla Morse testified that on several occasions she had purchased various items from the other employees while she was on her worktime.

There are no crucial credibility issues here to be determined. In the first place, I credit McCreary that he did not solicit Clodfelter to join the Union or to attend union meet-

ings. It is clear that McCreary was trying to persuade Clodfelter that the Union would benefit the employees.

Clearly, where Respondent's reasons for issuing discipline to McCreary are inconsistent, where Respondent has disciplined only one other employee for violation of its solicitation policy, and where Respondent permits widespread solicitation of nonwork-related items by both employees and supervisors while on working time, its issuance of a verbal warning slip to McCreary for alleged union solicitation, which McCreary credibly denies, is discriminatory enforcement of its solicitation policy because the solicitation was union based and thus protected and violates Section 8(a)(3) of the Act. *Funk Mfg. Co*., 301 NLRB 111 (1991); *Premier Maintenance*, 282 NLRB 10, 11 (1986).

On January 26 I find Respondent violated Section 8(a)(1) of the Act by Production Manager Wilson's telling McCreary that he could not discuss the Union with other emloyees and further violated Section 8(a)(3) and (1) by issuing to him a verbal warning reduced to writing for engaging in activities on behalf of the Union.

B. *The January 27 Allegation*

Gregory Benskin had been employed by Respondent for 13 years at the West Salem plant on the first shift as a filter assembler and at the relevant time here worked under the supervision of Jim Smith. Benskin was openly active in the UAW campaign from the enception of the drive, wearing as many as five pieces of union insignia on his apparel and a union hat. He also helped to handbill at the plant on two occasions. He testified that at least several supervisors observed this activity.

At issue here is his testimony that on January 27, he reported to work at about 6:30 a.m. and while completing some ''papers'' concerning the filters he would be running that day, Smith started talking to him about the union meeting the day before. Benskin testified that Smith asked him how many people from his line was at the meeting. Benskin, who was wearing his usual union insigna at that time, responded that ''it didn't concern him.''

Smith's version is that on that morning Benskin approached him and asked him about the UAW and he told Benskin he couldn't talk to him about it. Benskin then asked ''would you try to guide me'' and Smith replied, ''No, I will not.''

I agree with the General Counsel that it is unlikely that an employee so obviously prounion would have at any time sought ''guidance'' from a supervisor. Clearly, Smith's testimony is self-serving. Smith's questioning of Benskin regarding other emloyees' attendance at a union meeting is a coercive attempt to find out from a known and open union supporter the sympathies of other employees under the supervisor's control. Thus, Smith's questions suggest that his purpose was to find out from someone who would know what other employees are supportive of the Union and is hence violative 8(a)(1) interrogation. *Gardner Engineering*, 313 NLRB 755 (1994); *Cumberland Farms*, 307 NLRB 1479 (1992) affd. 984 F.2d 556 (1st Cir. 1993); *Liquitane Corp*., 298 NLRB 292, 293 fn. 4 (1990); *Raytheon Co*., 279 NLRB 245, 251 (1986).

C. *The April 26 Allegation*

The allegations of the incident here are based on the testimony of Carl Bunting and Mike Ferido who testified that, on April 26 as they were handbilling on behalf of the Union, employees at the Albion plant about 11 p.m., between the second and third shift change, Albion Foreman Judy Tate told them, ''I hope you guys are ready to pack up and move to Mexico.'' (Tr. 76, 110.) At the relevant time here, Bunting had been employed by Respondent about 4 years as a press operator on the third shift at the Albion plant. Michael Ferido had been employed as an auto press operator on the third shift at the Albion plant about 7 years.

Bunting and Ferido testified that during the UAW campaign they were open and vocal union supporters wearing union insigna and handbilling employees at the Albion plant. Bunting and Ferido's testimony is fairly consistent that about 11 p.m., April 26, Bunting approached Ferido in front of the Albion plant and asked if he would accompany him to the back entrance to the plant and handbill the shift-changing employees with handbills left over from a previous handbilling. They proceeded to the rear entrance where there was a picnic table used by the employees for a break and smoke area. They testified that shortly after they began handbilling there Judy Tate, supervisor over an air filter line on the second shift, came out and lit a cigarette.

According to their testimony, she asked what they were doing. They did not respond except to offer her a handbill, which she declined and said, ''Well, I should have expected something like this from you, Carl.'' About that time another employee, Carol Hixenbaugh came out to smoke and shortly after that Judy Tate said, ''I hope you guys are ready to pack up and move to Mexico.'' Bunting testified that she made the remarks a few times as they were trying to handbill.

Respondent called Supervisor Judy Tate and employees Carl Hixenbaugh and Tim Hatton with respect to this allegation. The gist of their testimony is that Hatton either came out of the plant with them or joined them shortly afterward. Their version is that when Bunting tried to give Hatton some union literature, Hatton asked Bunting why he wanted a union. Bunting responded by telling Hatton the benefits he thought the Union could get for them such as better pay, working conditions, etc. Hatton then made a comment to the effect that if the Union got in they had all better learn to speak Spanish.

Ferido testified that at some point after Tate's statement concerning the plants moving to Mexico another male employee joined them but he did not know his name and could not identify him. All Respondent's witnesses testified that Tate made little or no comment in response to Hatton's alleged comment about needing to learn to speak Spanish.

Tate did remember that after Hattons alleged statement, Bunting said, ''They're not going to move anything anywhere'' and a few other comments. She told them, ''well, that's what everybody thought about AMF when they were on strike one time.'' She continued that her sister worked for them during their last big strike and nobody believed the rumors that kept flying that they were going to move to Little Rock, Arkansas. (Tr. 178-181.) None of the employees present recalled Tate's talking about the AMF incident.

It is highly likely that there had been much discussion among the employees concerning the possibility of the plants moving to Mexico since early in the campaign, January 17,

when Tom Mowatt, apparently president of the Company, distributed a letter to all employees stating, inter alia, that ''The Big three auto makers (Ford, General Motors and Chrysler) are pressuring suppliers such as Champion to shift operations to Mexico. UAW members who work at auto and defense plants are losing their jobs in record numbers.'' (G.C. Exh. 3.)

Based upon the demeanor of Bunting, who testified creditable to another matter, and Ferido, both of whom testified in a straightforward and direct manner on both direct and cross-examination, and the fact that they are current employees testifying adverse to the interest of their employer, I credit their version of this incident. Accordingly, I find that Tate made the implied threat that Respondent would close their facility if the Union were selected to represent the employees. *Dlubak Corp*., 307 NLRB 1138, 1143, 1152 (1992), enfd. 5 F.3d 1488 (3d Cir. 1993). I find that there was probably also other comments concerning the learning of Spanish among the employees at that time.

D. *The May 16 Allegation*

The complaint alleges that about May 15 (this incident apparently occurred on May 16) Albion plant 1 Superintendent Jim Utley selectively and disparately enforced Respondent's rule with respect to solicitation and distribution by prohibiting employees from union solicitation and distribution while permitting such activity for nonunion purposes. The facts are not in dispute. Carl Bunting, the employee involved in subsection C, above, and Karla Morse are employed at Albion plant 1 on the third shift at which time the shift superintendent was Jim Utley.

At some point prior to their 1 a.m. break on May 16, Morse asked Bunting to accompany her to plant 2, located about 50 feet away, to talk to another employee about a union-sponsored meeting on workman's compensation. During their break Bunting and Morse went to plant 2 and located employee Joe Morber, the employee with whom Morse wished to speak, and while Morber continued to work Morse spoke with him about attending the workman's compensation meeting for 3 or 4 minutes.

According to Bunting and Morse, as they entered plant 2, Superintendent Bruce Rose saw them and followed them to Morber's workstation and stood nearby as Morse talked with Morber. Both Bunting and Morse were wearing union insignia on their apparel. Bunting testified that Rose followed them until they exited plant 2 at which time he heard Rose page Jim Utley. Bunting and Morse returned to their workstations prior to the end of their break.

As Bunting was starting his presses, Utley approached him and told him he could not be going to other people's work area bothering them and if it happened again ''he'd have to take some type of action.'' Utley then went to Morse workstation and asked if she had gone to plant 2 on her break. She admitted it and Utley told her she wasn't to do that. ''You ain't to leave this building. You ain't to bother Bruce's employees. And just stay in your work area.''

Morse testified that she had worked on all three shifts and it was ''common'' for employees from one plant go to the other to talk to employees about nonwork matters while on break and the other employees was working, since the two plants did not have the same breaktimes. Employees Wilmer McCreary, Robert Morris, and Carl Bunting essentially corroborated Morse as to employees visiting employees in the other building for nonwork-related purposes.

The Respondent contends that, as in section II,A above, that the employee Morse had spoken with had complained about Morse's interruption of his work to his supervisor. But, again, as in section II,A above, where Respondent did not call the complaining employee, Clodfelter, here they did not call Morber, who allegedly complained about the incident.

Here, as in section II,A above, Respondent prohibited its employees from engaging in activities on behalf of the Union under the same circumstances that it permitted them to engage in other nonwork-related activity. This disparate application of its rules violates Section 8(a)(1) of the Act. *Funk Mfg. Co*., supra at 116.

E. *The May 18 Allegation*

The allegation here is that Respondent, by Foreman Jim Smith, selectively and disparately denied off-duty employees access to the plant for union activities while permitting such access for other purposes. Gregory Benskin, the employee involved in section II,B above, testified that on May 18, he was off work with a job-related injury. He went to the West Salem plant for the purpose of submitting a doctor's report with respect to his injury as required by the Employer. After submitting the required physician report, Benskin went into the production area of the plant to talk with other employees about a union meeting scheduled for that afternoon. Benskin testified that the production line was down at that time, about 2 p.m., perhaps for change of filter types to be made. This testimony was not contradicted. Benskin was wearing several union buttons at the time. While he was talking to an employee, his supervisor, Jim Smith approached and told him, ''Being as you are on workmen's comp, you are not even supposed to be in here.'' Smith told Benskin he would have to leave. Benskin said, ''[O]kay, I didn't know that,'' and left the plant.

The General Counsel presented testimony from at least five witneses that Respondent had never before enforced any policy concerning off-duty employees being on company property.

Gregory Benskin testified that 3 years ago when a Board-conducted election was held for the Teamsters Union he had been home on extended sick leave and was called by Personnel Manager George Traub or his secretary to come into the plant to vote. Benskin testified that the voting area was off to the side of a production area and that after he voted he remained another 30 to 40 minutes talking to employees on the production line. Wilmer McCreary testified that he had returned to Respondent's facility after his working hours to get his personal tools and was observed by supervision and was not disciplined or counseled for that conduct. McCreary further testified to witnessing the plant manager bringing his personal lawn mower to the facility on a Saturday and having on-duty welders work on the manager's personal mower.

Robert Morris testified that he returned to Respondent's facility on numerous occasions when off duty and was never disciplined or counseled for that conduct. Morris testified that his wife had previously worked as a janitor for a cleaning contractor who performed janitorial work at Respondent's facilities and that he visited his spouse while she worked. Morris also testified that since he lives within two to three blocks from Respondent's facility, that he frequently

went to the canteen on company property to buy cirgarettes and candy. Bunting testified that he had returned to Respondent's facility at night when off duty to visit the canteen and buy soda and candy. Karla Morse testified that within the previous month she had gone to Respondent's facility during second shift to talk to an employee and that during this visit Supervisor Gene Owens observed her. Respondent did not produce evidence of discipline issued to any employee regarding this type of conduct. (G.C. Exhs. 4a, b.) Respondent's witnesses testified that in the past they had asked off-duty employees to leave the premises but none could recall specific instances of this conduct.

Respondent's vice president of human resources, Dudley Willis, testified that Respondent's policy of prohibiting off-duty employees from being present on the plant premises was designed to prevent the Respondent from being liable for any injury caused to an off-duty employee which may occur on the premises and would not be covered by worker's compensation. Willis testified that Respondent allows children of employees to be present on Respondent's property during shift changes for the purposes of the off-duty employee taking over child care responsiblities from the parent about to go on duty. (Tr. 153.) Willis admitted, however, on cross-examination that the Respondent would incur the same liability for any injury occurring to an employee's child as it would for an off-duty employee. Willis further admitted on cross-examination that on occasion when employees have had to retrieve their paychecks from their supervisor on the production floor because the supervisor failed to forward the unretrieved paycheck back to personnel, that the Respondent would also be similarly liable for any injury caused to the off-duty emloyee who came in to pick up his paycheck. Respondent's efforts with respect to accommodating its employees' child care needs and those employees needing to pick up their checks flies in the face of its alleged reason for denying employee Greg Benskin access to the plant when off duty on May 18.

Respondent entered into evidence three documents referring to its efforts to implement its policy regarding the prohibition of off-duty employees from plant property. (R. Exhs. 2, 3, and 4.) Respondent's Exhibit 2 was allegedly posted in 1982. Twelve years later and during a union-organizing campaign it attempts to initiate it again. (R. Exhs. 2, 3.) Respondent's Exhibit 4 is a memo issued to three of Respondent's managers but not to its employees. Respondent also presented evidence of its posting of notices on its entrances and exits prohibiting trespassers on its property. However, Respondent also offered evidence that Respondent also had posted at its exits and entrances signs which stated, ''No Admittance, except on-duty employees.'' (R. Exhs. 5–9, 11, 14–15.) Wilmer McCreary testified that within the past 2 months he had posted new signs specifically regarding off-duty personnel and that prior to that only signs referring to ''authorized personnel only'' had been posted on doors, and in some cases no signs at all had been posted. Respondent's attempts to depict its efforts to establish that it has maintained and enforced a policy prohibiting off-duty employees from its premises is self-serving. Respondent's offer of its exhibits 2 and 4 only reemphasize its meager efforts to implement a policy it does not enforce except with respect to union-related activities.

Therefore, where Respondent's reason for denying Benskin access to the plant premises while off duty is pretextual in that Respondent allows other off-duty employees access to its facilities for nonwork and nonunion-related purposes, which equally put the Respondent at risk of liability, its efforts to reinstitute its 1982 policy during a union-organizing campaign and in light of Benskin's open and obvious union support, it is apparent Respondent's conduct is a selective and disparate denial of an off-duty employee's access to the facililty for union activities and is violative of Section 8(a)(1) of the Act. *Nashville Plastics Products*, 313 NLRB 462 (1993); *Yale New Haven Hospital*, 309 NLRB 363, 370 (1992); *Funk Mfg. Co*., supra at 116; *Tri-County Medical Center*, 222 NLRB 1089 (1976).

CONCLUSIONS OF LAW

1. Respondent Champion Laboratories, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Automobile, Aerospace & Agricultural Implement Workers of America, UAW is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) of the Act by:

(a) Interrogating its employees concerning their union activities and desires and the union activity and desires of other employees.

(b) Prohibiting its employees from discussing the Union with other employees while on plant property.

(c) Impliedly threatening its employees that it would close its plants if they selected the Union to represent them.

(d) Selectively and disparately prohibiting union solicitation and distribution on company property while permitting such nonunion activity.

(e) Selectively and disparately denying off-duty employees access to company property for union activities, while permitting such access for other purposes.

4. Respondent has violated Section 8(a)(3) and (1) of the Act by issuing a verbal warning, reduced to writing, to its employee Wilmer McCreary because he engaged in protected concerted activities with other employees to join and assist the Union and to discourage employees from engaging in these activities.

REMEDY

Having found that the Respondent has engaged in conduct in violation of Section 8(a)(1) and (3) of the Act, which conduct interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them under Section 7 of the Act, Respondent shall be ordered to cease and desist from these unfair labor practices and take certain affirmative action to effectuate the purposes of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Champion Laboratories, Inc., Albion and West Salem, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees concerning their protected, concerted union activities or such activities by other employees.

(b) Disparately prohibiting its employees from discussing the Union with other employees.

(c) Threatening its employees that it will close its plants if they select the Union to represent them.

(d) Selectively and disparately prohibiting employees from union solicitation and distribution while permitting such activity for nonunion purposes.

(e) Selectively and disparately denying its off-duty employees access to the plant for union activities, while permitting such access for nonunion purposes.

(f) Issuing verbal warnings to its employees because they engaged in union and protected concerted activities in order to discourage employees from engaging in these activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remove from all its files any written reference to the verbal warning given Wilmer McCreary on January 26, 1994.

(b) Post at its facilities copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''